

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3458 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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RAMESH V. SHUKLA

Versus

STATE OF GUJARAT & OTHERS

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Appearance:

MR DV MEHTA for the Petitioner  
MR HL JANI for the respondents.

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/09/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties. The petitioner, a Joint Commissioner of Industries of the Government of Gujarat, filed this petition before this court praying therein for the direction to the respondents to give him the deemed date of promotion on the post of Joint Commissioner from May, 1981 with consequential benefits.

2. It is not in dispute that the petitioner has been promoted to the post of Joint Commissioner of Industries under the order dated 18-1-1984. The petitioner earlier filed a Special Civil Application No.4376 of 1981 before this Court in the matter of giving him the deemed date of promotion from March 1977 or March, 1978 in the cadre of Deputy Director. The writ petition has been allowed by this Court and the operative part of judgment is extracted below:

If the petitioner succeeds in getting promotion with effect from March 1977 or March 1978, he will get his promotion obviously from that period with all ancillary benefits, including the proper placement in the seniority list and further chances of promotion. The persons who have allegedly superseded him in the course of the years are already made parties to this petition, but they have chosen not to appear and contest this petition. So there is no question of any prejudice likely to be occasioned to them, because of this order being passed by me. As the grievance of the petitioner is very old, it is directed that the directions issued in this writ petition shall be complied with, within the period of three months from the date of the receipt of this writ.

Rule is accordingly made absolute to the extent as stated above, with no order as to costs.

The directions were issued to the respondent to consider the case of the petitioner for promotion to the post of Deputy Director from March, 1977 or March, 1978 and in case he is found suitable for promotion from the aforesaid date on the said post then he shall be entitled for all the consequential benefits. In compliance of the order of this court, the case of the petitioner has been considered for giving him the deemed date of promotion on the post of Deputy Director now Deputy Commissioner of Industries from March, 1977 or March, 1978. After considering this case for the aforesaid post, his case for promotion to the next higher post has also been considered and the order has been passed in this respect on 8th June, 1983. The selection committee has adjudged the petitioner suitable for promotion to the post of Deputy Commissioner as on 25th March, 1977. The case of the petitioner has also been considered for promotion to the post of Joint Commissioner keeping in view his deemed date of promotion in the cadre of Deputy Commissioner, but the Selection Committee had recommended that he is

not fit for promotion to the post of Joint Commissioner of Industries. The recommendation of the Selection Committee was accepted by the State Government. Later on, as stated earlier, he was promoted to the post of Joint Commissioner in the year 1984.

3. The counsel for the petitioner does not dispute that the criteria for promotion was proved merit and efficiency in the service. The petitioner has a right of consideration for promotion and after considering his case qua his juniors, if selection committee has not found him to be more meritorious, then no grievance could have been made by him. It is true that the petitioner possessed unblemished service record to his credit, but on this fact alone, he will not get the promotion on the post of Joint Commissioner which has to be given on the criteria of proved merit and efficiency. The seniority of an officer in the matter of promotion to the next higher post on the criteria of proved merit and efficiency has relevance only to bring him in the zone of consideration and it may play a role ultimately where two officers were found to be of equal merits. In that case, the seniority may tilt the balance and the senior may be given preference, but otherwise on the basis of seniority and unblemished service record no officer could be promoted because on assessment of comparative merits, juniors who may have better service record than the petitioner could be promoted. The decision of the Selection Committee which consists of expert persons also is not subject to judicial review by this Court. In all the cases the judicial review of such a decision may be there in case the petitioner has made out a case of malafides against any member of a Selection Committee. Nothing more has been said by the petitioner except that he possesses unblemished service record which has no relevance whatsoever. In the case where the criteria for promotion is seniority cum merit then if the petitioner has unblemished service record, he would have been given the promotion, but not in case where the criteria is proved merit and efficiency. The case of the petitioner has been considered and he was not found suitable by the selection committee for promotion. That decision of the selection committee does not call for any interference by this Court. None of the legal or fundamental right of the petitioner is infringed nor the petitioner has made out any case of malafides against any member of the selection committee.

4. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Ad-interim relief, if any, granted by this Court stands

vacated.

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